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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)
)
Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

MM Docket No. 92-265

To: The Commission

REPLY COMMENTS OF LIFETIME TELEVISION

Hearst/ABC-Viacom Entertainment Services, doing business as Lifetime Television ("Lifetime"), respectfully submits these Reply Comments concerning the Petition For Reconsideration and Clarification ("Petition") of the First Report and Order¹ in this proceeding, filed by Viacom International Inc. ("Viacom"), on June 10, 1993. Lifetime supports the proposal of Viacom and others that the Commission adopt a de minimis subscribership exemption to its new program access rules.

Lifetime is a basic cable television program service, launched in 1984, which serves more than 56 million subscribers on some 6,000 cable systems. As its Comments in the initial rule

¹FCC 93-178, released April 30, 1993.

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making proceeding explained,² Lifetime is a general partnership owned by companies with broadcast as well as cable interests. Its majority owner is Hearst/ABC Video Services ("HAVS"), which holds a 53.3 percent general partnership interest. HAVS itself is a general partnership owned by Capital Cities/ABC Video Enterprises Inc., a subsidiary of Capital Cities/ABC Inc., and The Hearst Corporation. HAVS has no interest in cable systems. Viacom holds a minority 33.3 percent general partnership interest in Lifetime through its subsidiary, LT Holdings, Inc. Another wholly-owned division of Viacom, Viacom Cable, owns and operates cable television systems.

Lifetime's Comments argued that if the Commission were to adopt a version of the broadcast attribution rules to measure vertical integration, then it should also recognize the need for limiting unnecessary burdens on programmers where no anti-competitive potential or incentive exists. As one modification, Lifetime proposed that the Commission extend the broadcast rules' "single majority shareholder" exemption to partnerships such as itself. Thus, a multiple system owner's ("MSO") minority interest in a satellite cable programmer, even if above the attribution benchmark, would be exempt from attribution if another entity which is not a cable operator held an interest greater than 50 percent.

²Comments of Lifetime Television in MM Docket No. 92-265, filed January 25, 1993.

The need for avoiding overly broad restrictions is particularly acute here in view of the all-encompassing attribution standard adopted by the Commission. Indeed, this standard is far more inclusive than that underlying the broadcast multiple ownership rules.⁵ Thus, Lifetime's original concern that a sweeping attribution standard would hinder capital investment in program creation and distribution has become even more heightened. Cable operators could reduce their stake in

necessary to serve the purpose of the statute. Lifetime's existing rate structure does not discriminate against nonaffiliated cable operators, whose systems are charged no more for programming than those owned and operated by minority partner Viacom, within the same subscriber levels. Nevertheless, despite its record of fair dealing, Lifetime faces compliance with a costly regulatory scheme triggered by the fact that it has a minority cable partner, although that partner's subscribers represent less than 1.9 percent of Lifetime's cable subscriber base.

Lifetime submits that an exemption based upon de minimis subscribership, as proposed by Viacom, would be one appropriate way to insure that the program access rules do not sweep too broadly. Viacom's economic analysis convincingly demonstrates that a vertically-integrated programmer that depends on affiliated cable systems for less than 5 percent of its total subscriber base has no incentive to deny programming to non-cable distributors. Lifetime's practices confirm that conclusion. As of the end of 1992, non-cable distributors such as TVRO, SMATV and MMDS accounted for 13.9 percent of Lifetime's total subscriber base. As alternative distributors such as DBS continue to emerge, this figure should increase tremendously. Indeed, Lifetime currently makes its programming available to noncable distributors which compete with Viacom cable systems. As a result of Lifetime's continuing efforts to cultivate alternative markets in which to distribute its service, revenue

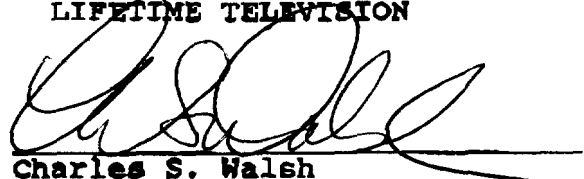
from such noncable distributors now accounts for almost two and one-half times the revenue that Lifetime derives from Viacom cable systems. Thus, Lifetime could ill-afford to exclude competing distribution technologies even if it had not been

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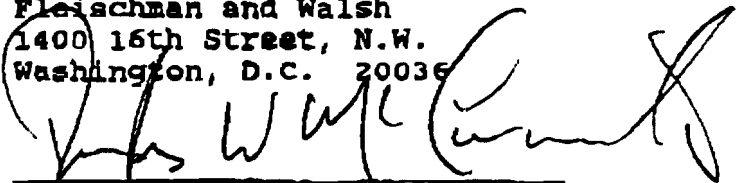
Lifetime continues to believe that the relief it proposed initially, based upon particular ownership arrangements such as the existence of a single majority equity holder, remains a very valid approach. In addition, the de minimis subscribership exemption, which is fully supported by Viacom's thoughtful and comprehensive economic analysis, provides another effective, carefully crafted means of providing relief for entities such as Lifetime, in which no real potential or incentive for anticompetitive behavior exists. Lifetime urges the Commission to fashion fair and effective relief as soon as possible.

Respectfully submitted,

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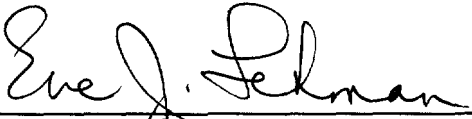
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CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm Fleischman and Walsh, hereby certify that I have this 26th day of July, 1993 placed a copy of the foregoing "Reply Comments Of Lifetime Television" in U.S. First Class Mail, addressed to the following:

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